

First, a review of the current case is in order. The case was filed in February of 2004 as a simple divisional. In a world with a functional patent office, examination of this simple divisional application would have required no more than three to six months. Instead, as per the telephonic and written correspondence between Applicant and the PTO, the present case was "lost" by the PTO for approximately two years.

Thus, here we are rounding the third year corner and responding to a first office action.

In Applicant's experience, this kind of blatant disregard for basic competency and lack of basic respect for inventors -- or rather, small inventors -- is uniform throughout the United States Patent and Trademark Office. Applicant has patent applications currently being infringed by competitors that have been pending for over half a decade, and nothing is being done. Another year of the inventor's life goes by, and nothing happens. No work gets done. No office action issues. No signs of life at the PTO. No indication that the PTO even considers itself obligated to appear to be functioning. Even the granting of a "petition to make special" has no effect at the PTO, as Applicant knows first hand.

While it may be unimportant for a large corporation to have its patents issue in a timely fashion, unreasonable delay by the PTO has a dramatic effect on independent inventors. Independent inventors do not typically have an infinite supply of dollars to lounge around with while their work languishes pointlessly in a forgotten file at the patent

office. Oftentimes, the only way for a full-time, professional inventor to get paid is to have a patent in hand. Thus, given the currently nonexistent PTO, the primary choices an independent inventor now faces are (I) go out of business or (II) starve to death.

If and when the PTO finally does stoop to provide an office action, an independent inventor feels compelled to capitulate just to get some kind of patent to issue before the fleeting condescension of an Examiner disappears whence it came.

"Better to get cheated out of most of what I'm due," goes the reasoning, "than to go on starving to death or to go out of business altogether."

Given the wide circulation of PATNEWS and other critiques, Applicant suspects that this state of affairs is well-known to the PTO and that these delays are therefore not accidental. Rather, in breaking the will of the independent inventor, delay serves an expedient alternative to the hard work of actually examining patent applications.

2. Applicant's earlier response

Applicant is a full-time, professional, national award-winning inventor, with patented and patent-pending inventions in more than a dozen fields, ranging from computer hardware and software to barcode technology, musical and medical devices, financial services, search engines, time display devices, and political systems. Meanwhile, the present invention is itself an award-winning

invention that generated international press and international sales in over 30 countries immediately upon its being made publicly known.

Despite these facts, Applicant, for reasons like those above, originally felt that it was better to get cheated out of meaningful protection for the invention than to have the present application blow in the wind for another half decade while the PTO diligently loses things. Thus, Applicant filed the above-referenced amendment to the claims in response to the above referenced office action, essentially capitulating.

However, since Applicant's amendment was rejected as noncompliant -- the worship of form over substance being another venerable tune in the USPTO delay repertoire --, Applicant has had an opportunity to reconsider this initial surrender.

Upon such reconsideration and for the reasons stated below, Applicant is no longer willing to be ripped off. Rather, Applicant will either be shown sufficient prior art to defeat patentability -- of which none has yet been cited by Examiner -- or be granted a patent that contains the claims as originally filed. Applicant therefore requests that the original claims (a copy of which is attached with status indicators) be reinstated.

3. No relevant prior art yet cited

Examiner has uncovered several patents in which cases and wearable straps are shown. That's just great. Cases and

straps are depicted in sculptures that were made in ancient Greece and Rome 2500 years ago, and this reality was known to inventor at the time of filing.

Thus, nothing in the present application was predicated upon some irrational belief that inventor had invented the concept of a case or the concept of a strap. Such a point was never in dispute in the first place and is otherwise totally irrelevant to examination of the present application.

In light of the use of straps and cases by ancient Greeks and Romans and all known civilizations since that time, the following citations by Examiner are irrelevant to the present case in that they shed no additional light on the novelty or non-obviousness of the present invention:

Antaki, 5,752,633; Hacker, 5,927,210; Boyer et al., 5,713,548; Meldrum, 4,509,667; Nangle, 4,586,506; Booker, 4,746,043; Henry et al., D 344,411; Flowers, 5,433,359; Yang, 5,511,702; Garrett, 5,644,785; Hale, D 382,995; Timberlake, 5,820,000; Merritt, D 420,506; Racca, 6,182,878; Moore, 5,174,483; Chacon et al., 6,102,266.

Sheer speculation, directly against the weight of evidence

Contrary to the speculations of Examiner, it seems clear -- indeed "obvious" -- that if, during this 2500 year time span, there had been an obvious technique for taking two separate products and simplifying them into a single product, the hundreds of thousands of inventors that have lived since the time of ancient Greece would have used this technique. Most human beings known to Applicant would

prefer to use one thing rather than two things, and this preference is probably not unique to modern citizens.

Moreover, inventor's invention is particularly useful to users of electronic devices, especially PDAs; thus inventors in the last 15 years or so have had a special incentive to invent or at least suggest such a device, and yet, as the record now stands, no one other than inventor has done so.

Nonetheless, in classic "hindsight-is-20/20" fashion, Examiner has taken the -- completely speculative and unfounded -- position that, with all those cases and straps out there, it must have been obvious to invent a third thing. That theory may be justly described as the, "Just grow enough pine and oak trees, and you'll eventually get oranges" line of reasoning, and it is not persuasive.

On the contrary, literally millions of cases and straps are sold annually, and yet, as the record now stands, no one other than inventor has revolutionized them in the disclosed and claimed way.

That's why **PalmPower** gave its Editor's Choice Award in 1999 to the present invention. But maybe the editors at *PalmPower* are just stupid.

If they are, then so are the editors of **Computerworld**, **Pen Computing** magazine, **ZDTV's FreshGear**, and numerous other cutting-edge publications that published separate articles covering the novelty of the present invention.

One thing is clear though: these publications do NOT give awards and coverage to 2500 year-old technologies such as the duplicative matter cited by Examiner.

Moreover, it's hard to understand why an obvious invention was neither disclosed nor suggested nor sold by any the inventors cited by Examiner, nor by all the companies, such as **Targus**, which make millions of dollars annually from the sale of cases and straps and whose employees are in contact with cases and straps every day of their working lives. But maybe all those folks at Targus and all those inventors cited by Examiner are just stupid, too.

Meanwhile, how have the folks at Targus and other such companies succeeded in the marketplace while being so stupid? Inquiring inventors want to know, and there's no explanation given by examiner to date.

It's a pretty stupid world we live in, apparently, at least according to the Examiner.

Applicant disagrees with this position however. The aforementioned inventors, entrepreneurs, business owners, employees and editors are not stupid. It's just that the present invention is not obvious and has never been disclosed or enabled other than in the present application.

"Secret prior art" standard does not exist

Or maybe the above companies, employees, inventors and editors are not stupid; they're just being coy. Maybe they would rather hide their inventions in secret little

drawers, drawers not unlike the secret little drawers in which the PTO lost the present application. If so, why? Why would they have invented a product and then hide it rather than sell it? Why would they disclose a product that was halfway there -- a case or a strap -- when they could have disclosed a single product that replaced both? Obviously, no such disclosure was made, which begs the question as to why.

And, if they were keeping this invention a secret, how does their special little secret qualify as a prior art publication? Are publications secrets, and are secrets publications? If so, Applicant -- and probably many other inventors -- want to know, because no "special secret prior art" standard is discussed in Applicant's copy of 35 U.S.C.

If the Examiner has answers to these questions, they need to be made part of the record in this case. If not, it's time for the patent to issue.

4. "Shape" and Examiner's re-writing of prior art with benefit of the present invention

Examiner apparently labors under the belief that shape is irrelevant to patentability. Yet, by way of example, the only difference between a metal key and a metal gear is shape. These devices are clearly patentably distinct and, indeed, essentially irrelevant to one another. Yes, a metal key can be reshaped to form a gear, yet that hardly makes a key a gear or a gear a key.

Similarly, Examiner actually reshapes the prior art - with

no suggestion in the prior art whatsoever to do so -- to create the present invention and thereby purportedly defeat patentability of the present invention. Applicant is unaware of any case in which an invention can be used to retroactively defeat itself as prior art, and the notion seems, quite frankly, legally ridiculous, logically nonsensical, and intellectually offensive.

Accordingly, Examiner's comments with respect to claims 1 - 20 in reference to Hacker, Antaki, and Boyer et al. are meritless and frankly offensive.

5. Claim-by-claim analysis of Office Action

Examiner's assertions with respect to claims 1-6 and 13-19 and Antaki are simply false as a factual matter, since Antaki, to the degree that it is a case at all, is a case (which it calls a "holster") all the time. It is therefore not alternately movable and fixable into the shape of one or the other of a case or mount.

Moreover, and perhaps most importantly, there is **no mention, disclosure or suggestion of any kind whatsoever** in Antaki to do any such reshaping of the Antaki device. **Examiner is plainly and simply rewriting Antaki through the use of inventor's invention.**

Moreover, the arrangement of fasteners in Antaki is not correct to enable the claimed matter. The arrangement of the present invention -- namely, a design that allowed the strap to bind to itself in two different directions to form two different shapes for two different purposes -- required

a great deal of imagination and experimentation on the part of inventor, and since Antaki fails to enable it, Antaki is simply insufficient to serve as prior art.

Moreover, all materials are flexible to at least a small degree -- even, say, steel and concrete --, and thus Examiner's reasoning with respect to claims 3,4, 15, 17 and 18 (that the flexibility of the material in Antaki provides a movable coupling) would defeat all claims involving movable couplings that have been made in the history of patents. Applicant does not believe that such an extreme and absurd position is warranted or, quite frankly, even nonfrivolous.

Nonetheless, to indulge it further, the legal principle that the claims are to be read in light of the specification is extremely well-established, which principle Examiner has clearly forgotten: no one is out there wearing a steel or concrete wristband, yet even these things would flex to a small degree. Examiner is committed to asserting that concrete and steel would be, therefore, movable couplings, a position that Applicant believes to be ridiculous, frivolous, and essentially intended to harass.

Examiner's discussion of the loop in claim 19 pretends as though the loop added in this dependent claim were supposed to stand on its own, which position is, of course, plainly false. Taken together with the limitations in the antecedent claim, no such loop is disclosed in Antaki, and thus the Examiner's claim is again simply false as a factual matter.

In reference to claims 6 and 16, the respective antecedent claim has not been disclosed nor enabled nor suggested by Antaki, and thus the discussion of a flashlight being an electronic device -- as though that were disputed -- is irrelevant.

As an aside, it should be noted that a flashlight is not an output device as that term is used in the current specification, wherein that term is clearly used to mean an information output device.

Examiner's assertions with respect to claims 1-6 and 13-19 and Hacker are again simply false as a factual matter, since Hacker provides ***no case member whatsoever and never even mentions the word "case" or anything synonymous to or analogous to it.***

Moreover, ***there is nothing in Hacker that could remotely serve as a case--something that covers the thing encased--***, even if the Examiner chooses to rewrite Hacker with hindsight using the present invention.

The remaining nonexistent things that Examiner has asserted exist in Hacker do not exist in Hacker, and thus Applicant is at a loss to provide further argumentation other than to simply say that "things that don't appear, don't appear, and cannot now be added into Hacker by the Examiner."

Meanwhile, the obviousness objection made against claims 7 and 20 is inapplicable because the independent claims from which these claims depend are allowable.

Moreover, the additional limitations provided in these claims are not obvious: ***if they were, the present invention would not have been the international news-generating event that it was at the time of its release and, with millions of cases on the market, at least ONE of them would have included this "obvious" invention.*** Major, cutting-edge publications do not flock to straps such as those appearing in Hacker and Boyer et al. They do, however, flock to inventions of things that have never existed before, such as the present invention as claimed.

6. Requirement of prior art

Claim rejections under 35 USC §102 and §103 require reference by the Examiner to prior art that discloses or suggests an invention. No such prior art has been provided at this point. Indeed, no relevant prior art has been provided other than that which duplicates what was known at the time of Julius Caesar and is not now nor ever has been an issue in this case.

Applicant hereby requests that Examiner either (I) provide citations to prior art upon which rejections are based or (II) allow the present claims.

"Special secret prior art" and using the present invention to rewrite the nonsecret prior art are not now and never have been grounds for 102 or 103 rejections.

7. Conclusion

Since the Examiner has not cited any prior art that,

separately or in combination, discloses, enables, suggests or otherwise opposes the allowability of any claim in the present application, Applicant hereby requests that the claims as originally filed (and again attached hereto) be allowed and the resulting patent issued immediately.

Applicant further requests a handwritten apology from the Commissioner for the continuing embarrassment and offense that is the present state of affairs at the United States PTO or a written resignation of the same individual.

Applicant further requests payment of Attorney's fees as compensation for having to address the frivolous objections made in the above office action and for the unreasonable delay of this case.

A copy of the claims as originally filed is attached with status indicators. If the previously filed amended claims that were noncompliant have nonetheless been entered, please amend them again back to their original language so as to establish the original set of claims as the current set of claims to be examined and allowed.

Respectfully submitted,



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